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| JOHN D FLYNN 972 B656 IBM CORPORATION PO BOX 12195 RESEARCH TRIANGLE PARK NC 27709 | LM02/1203 | EXAMINER |
| | | VU, T |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/883,710

Applicant(s)

Walker

Examiner

Thong Vu

Group Art Unit

2756

 Responsive to communication(s) filed on Sep 13, 1999. This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

 Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

 Claim(s) _____ is/are allowed. Claim(s) 1-20 is/are rejected. Claim(s) _____ is/are objected to. Claims _____ are subject to restriction or election requirement.

Application Papers

 See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on _____ is/are objected to by the Examiner. The proposed drawing correction, filed on _____ is approved disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

 Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All Some* None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) _____. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

 Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Introduction

1. This office action is in response to Amendment A filed Sep 13, 1999. Claims 1-19 and new claim 20 are pending. The objections and rejections cited are as state below

Response to Amendment

2. Applicant's amendment filed Sep 13, 1999 have been fully considered but they are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 19, the word "means" is preceded by the word(s) "comprising" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-8, 14 and 16 are rejected under 35 U.S.C. § 102 [a,e] as being unpatentable over Ellis [5,483,530]

As per claim 1, Ellis discloses *a communication system* or communication network [col 1 line 7]; *the first information frame* or first message [col 1 lines 59]; *selectively receiving a first response in response to transmission of the first information frame* or the first response time [col 2 line 15]; *measuring or calculating a first amount of time between transmission of the first information frame and receipt of the first response* [col 2 lines 54-57]; *selectively modifying a response time value in response to the first amount of time* or retry time is adjusted based on the first response time [col 2 line 33]

As per claims 2 and 8, Ellis discloses *incrementing an initial response time value by a timer resolution value, to form the response time value* such as the retry number is increment [col 6 line 34]. By this rationale claims 2 and 8 are rejected.

As per claims 3 and 16, Ellis discloses *incremented up to a maximum response time value* [col 2 lines 15]. By this rationale claims 3 and 16 are rejected.

As per claims 4 and 14, Ellis discloses *the initial response time value is a default value or some initial value* [col 5 line 61]. By this rationale claims 4 and 14 are rejected.

As per claim 5, Ellis discloses *the response time approximates an amount of time the communication system requires to transfer the first information frame between a first data processing system and a second data processing system* or a first messages sent from the first network device to the second network device [col 1 lines 59-60]. By this rationale claim 5 is rejected

As per claim 6, Ellis discloses *the response time value is dynamically modifiable in response to the first amount of time* such as adjust the retry time based on the first response time using the predefined formula [col 2 lines 30-35]. By this rationale claim 6 is rejected.

As per claim 7, it contains the similar limitations set forth of method claim 1. Therefore and claim 7 is rejected for the same rationale set forth claim 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(a) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-10 are rejected under 35 U.S.C. § 103 as being unpatentable over Ellis [5,719,882] in view of Chao et al [5,964,837]

As per claim 9, Ellis discloses *setting a transmit sequence value when the first frame of information is transmitted; initiating operation of a response timer when the first information frame is transmitted; comparing the transmit sequence value and a receive sequence value when the first response is received; and idling operation of the response timer when the transmit sequence value (or a number of consecutive successful responses) corresponds to the receive sequence value* [col 2 lines 55-64]. However Ellis does not teach the timer. The skilled artisan would have looked to the communication system art and have been led to utilize the query timer in Computer network management using Dynamic Switching between Event Driven and Polling Type of monitoring from manager station as taught by Chao et al [col 12 line 51]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the query timer or response timer as taught by Chao et al into the Ellis system to enhance the timing calculation in the communication network. By this rationale claim 9 is rejected.

As per claim 10, Ellis-Chao discloses *restarting operation of the response timer when the transmit sequence value differs from the receive sequence value* [col 2 lines 19-24]. By this rationale claim 10 is rejected.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11-13, 15, 17-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Ellis [5,719,882] in view of Chao et al [5,964,837] and further in view of Sato [5,592,468]

As per claim 11, Ellis-Chao discloses *transmitting a second information frame; selectively receiving a second response in response to transmission of the second information frame; measuring a second amount of time between transmission of the second information frame and receipt of the second response; and selectively initializing a query timer with a maximum response time value* [Chao col 12 line 51]. However Ellis-Chao do not teach the using second frame and the second response to measuring the response time. It is well-known in the communication system art to compare the first and second frame or the first and second response as taught by Sato. Sato calculates the responses between the first and second frame to collect the information between source and destination [Sato col 4 lines 25-30, col 6 lines 53-63, col 9 line 5-17, col 11 line 20-30, col 21 line 60-col 22 line 33, col 27 lines 16-60, col 33 lines 14- 37]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the using of second frame and second response as taught by Sato into the Ellis-Chao system in order to enhance the data transfer efficiency on communication network. By this rationale claim 11 is rejected.

As per claim 12, Ellis-Chao-Sato discloses *selectively modifying the response time value to correspond to a residual time value remaining in a response timer after the second amount of*

time has passed such as the retry time is set to amount equal to twice the first response time [Ellis col 2 line 28]. By this rationale claim 12 is rejected.

As per claim 13, Ellis-Chao-Sato discloses *the response time value is selectively modified to equal the residual time value plus a timer resolution* or retry time plus one [Fig 5]. By this rationale claim 13 is rejected.

As per claim 15, Ellis-Chao-Sato discloses *maximum amount of time the communication system requires to transfer the first frame of information between a first data processing system and a second data processing system* [Ellis col 2 line 25]. By this rationale claim 14 is rejected.

As per claim 17, it contains the similar limitations set forth of method claims 1 and 9.

Therefore and claim 17 is rejected for the same rationale set forth claims 1 and 9.

As per claim 18 , it contains the similar limitations set forth of method claim 6 . Therefore, claim 18 is rejected for the same rationale set forth claim 6.

As per claim 19, Ellis-Chao-Sato discloses *incrementing the response timer value by a preselected time period in response to the first amount of time* [Sato col 17 line 25][Ellis col 2 line 50-53]. By this rationale claim 15 is rejected.

As per claim 20, Ellis-Chao-Sato discloses *a first amount of time between transmission of the first information frame and receipt of the first response uses a timer operating in response to a clock , and wherein said response time value is a response time of said timer* [Chao col 12 line 51]. By this rational claim 20 is rejected.

Conclusion

9. All claims are rejected.
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Schrader et al ; Communication network having a dormant polling protocol [5,896561]

-Raith et al. Activity control for a mobile station in a wireless communication [5,806,007]

-Hurvig. Method and apparatus for supporting multiple outstanding network requests on a single connection [5,678,007]

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (703)-305-4643. The examiner can normally be reached on Monday-Thursday from 6:30AM- 4:00PM. The examiner can also be reached on alternate Fridays during the same hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Frank Asta*, can be reached on (703) 305-3817 or via e-mail addressed to [Frank.Asta@uspto.gov]. The fax number for this Group is (703) 308-6606 or 308-9731

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thong.vu@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Thong Vu
Nov 23, 1999



FRANK J. ASTA
SUPERVISORY PATENT EXAMINER
GROUP 2700